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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,786	02/28/2004	Paul Brent Rivers	03-BS046 (BS030553)	9426
38515	7590	09/22/2005	EXAMINER	
BAMBI FAIVRE WALTERS PO BOX 5743 WILLIAMSBURG, VA 23188			DURAND, PAUL R	
		ART UNIT		PAPER NUMBER
		3721		

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/789,786	RIVERS ET AL.
	Examiner	Art Unit
	Paul Durand	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 6/30/2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 12-18 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 and 19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 12-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/2/2005.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iannone (US 4,315,551) in view of Pfaff (US 2,839,754).

In regard to claim 1 and as the examiner understands the claim, Iannone discloses the invention as claimed including a body 22, an elongated shank portion, the body having a closed end 40, extending outwardly, an open end 26, and an interior longitudinal portion into which a sleeve in the form of boss 50 is inserted and which is controlled by the shape of the longitudinal bore, the sleeve comprising a longitudinal bore 60 for fitment over a shafted body 10 (see Figs. 1,2 and C1,L35 – C3,L47). What Iannone does not disclose is the use of an inner sleeve, which projects downward to the opening of the outer body when it is mated with the outer body. However, Pfaff discloses that it is old and well known in the art to provide a device for driving a member

6 into a substrate comprised of outer body 21 and an inner sleeve in the form of guide member 3, which extends to the open end of the outer body for the purpose of holding, and guiding the member during the driving operation (see entire document). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Iannone with the inner sleeve as taught by Pfaff for the purpose of holding, and guiding the member during the driving operation.

In regard to claims 2 and 3, Iannone discloses the invention substantially as claimed as applied to claim 1 except for the explicit type and color of the material of the driver cap other than steel. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a driver assembly manufactured from polymer, glass, plastic, ceramic or glass, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Iannone with an assembly manufactured from polymer, glass, plastic, ceramic or glass for the purpose of choosing a suitable material for an intended use.

In regard to claims 4-7, Iannone discloses the invention substantially as claimed including a body having a cylindrical shape. What Iannone does not disclose is the body being hexagonal polygonal or rectangular. However, the examiner takes Official Notice that it is old and well known in the art to provide a body having different shapes

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for the purpose of accommodating differently shaped rod shafts and heads. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Iannone with an assembly and body that is hexagonal polygonal or rectangular for the purpose of accommodating differently shaped rod shafts and heads.

In regard to claims 8-10, Iannone discloses the invention substantially as claimed as applied to claim 1 except for the explicit range of dimensions for the assembly. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a specific range of dimension for the diameters and length, since it has been held that where the general conditions of a claim are disclosed, in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

In regard to claim 11, Iannone discloses the invention as claimed including rounded edges (see Figs. 1-4)

In regard to claim 19, Iannone discloses the invention as claimed including positioning a driver cap over the end of a shafted body, the cap a tubular body 22, an elongated shank portion, the body having a closed end 40, extending outwardly, an open end 26, and an interior longitudinal portion into which a sleeve in the form of boss 50 is inserted and which is controlled by the shape of the longitudinal bore, the sleeve comprising a longitudinal bore 60 for fitment over a shafted body 10 and applying a force to the end of the cap to drive the shaft in the ground (see Figs. 1,2 and C1,L35 – C3,L47). What Iannone does not disclose is the use of an inner sleeve, which projects

downward to the opening of the outer body when it is mated with the outer body. However, Pfaff discloses that it is old and well known in the art to provide a device for driving a member 6 into a substrate comprised of outer body 21 and an inner sleeve in the form of guide member 3, which extends to the open end of the outer body for the purpose of holding, and guiding the member during the driving operation (see entire document). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Iannone with the inner sleeve as taught by Pfaff for the purpose of holding, and guiding the member during the driving operation.

### ***Response to Arguments***

4. Applicant's amendment to claim 1 has overcome the 112 rejection for indefiniteness.
5. Applicant's arguments filed 6/30/2005 have been fully considered but they are not persuasive.

Applicant's amendments to claims 1 and 19 overcome the 102(b) rejection. However, a new grounds of rejection including the teaching of Pfaff has been made in regard to these claims.

In regard to claims 2-10, the applicant argues that the examiner has not established a *prima facie* case of obviousness. The examiner disagrees with the argument. In claims 2 and 3, *In re Leshin*, is being cited to show applicant that it is old and well known to choose a specific material on its basis for suitability for its intended

use. See also MPEP 2144.07. Likewise with *In re Aller*, is being cited to show applicant that it is old and well known to choose optimum ranges of operation. See MPEP 2144.05.

Therefore, for the reasons indicated above, the rejection is deemed proper.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

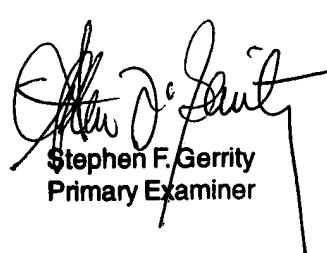
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
September 16, 2005



Stephen F. Gerrity  
Primary Examiner